

10159-US-PCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF EDWIN CLARK ET AL.

FOR: BIOMARKERS AND METHODS FOR DETERMINING SENSITIVITY TO EPIDERMAL
GROWTH FACTOR RECEPTOR MODULATORS

APPLICATION NO: 10/585,261

APPLICATION DATE: JANUARY 7, 2005

ART UNIT: 1642

EXAMINER:

CONFIRMATION NO: 3933

USPTO CUSTOMER NO: 23914

Mail Stop PCT
Commissioner for Patents
Attn: Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

Renewed Petition Under 37 CFR 1.137(a)

Sir:

This Renewed Petition is being filed in response to the Decision on Petition under 37 CFR 1.137(a) of August 21, 2009 ("Decision").

Applicant hereby (1) requests reconsideration of the Petition for Revival filed June 18, 2009, including entry of the Response to Notification of Missing Requirements, (2) authorizes payment of the petition fee as set forth in § 1.17(l) under Account No. 19-3880 in the name of Bristol-Myers Squibb Company to the extent this Renewed Petition requires the petition fee, and (3) submits additional evidence that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable.

The Decision states that the previously submitted petition fails to provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed for reply. In response, Applicant encloses:

- (i) A copy of the log (Exhibit 1) showing all the mail received from the USPTO during the time period (October 24-28, 2008) the non-received Office communication (i.e., the Notification of Missing Requirements mailed October 24, 2008) would have been entered had it been received and docketed for reply. Note that this log does not indicate receipt of the subject non-received Office communication.
- (ii) A docket report for the instant application (Exhibit 2), which includes showing all replies docketed for a date of two months from the mail date of the non-received Office communication which was around December 24, 2008. Note that this docket report does not indicate receipt or docketing of the subject non-received Office communication. In fact, the docket report indicates that

EV303255714US

Applicant had docketed as a placeholder a "Missing Parts Due – Declaration" item originally on 2/5/07, then on 10/26/07, then pushed forward every six months to eventually file a Declaration in due course once a Notification of Missing Parts was mailed by the USPTO, and this placeholder docket item was closed on June 18, 2009 concurrent with submission of the Petition to Revive; further evidencing non-receipt of the subject non-received Office communication.

As stated by Applicant's Representative in the original petition and evidenced by the enclosures to this Renewed Petition, the Notification of Missing Requirements mailed October 24, 2008 was not received at the correspondence address of record or otherwise received by Applicant, and it was only after receipt of the Notification of Abandonment mailed May 15, 2009 that Applicant became aware of this Notification of Missing Requirements.

Applicant believes an adequate showing of the cause of the delay has been shown, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable. Accordingly, Applicant hereby petitions for the revival of this application.

The Commissioner is hereby authorized to charge any additional fees under 37 CFR §1.17 which may be required, or credit any overpayment, to Account No. 19-3880 in the name of Bristol-Myers Squibb Company.

Respectfully submitted,

Bristol-Myers Squibb Company
Patent Department
P.O. Box 4000
Princeton, NJ 08543-4000


Paul D. Golian
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Reg. No. 42,591
Phone: 609-252-4091
Date: October 21, 2009

Exhibit 1

USPTO MAIL RECEIVED BETWEEN OCTOBER 24, 2008 and OCTOBER 30, 2008

Family Number	Filing Number	Filing	Country	Date Received/Performed	Event
PH7088	12/257809	24 Oct 2008	United States Of	24 Oct 2008	Filing
10294	11/243242	04 Oct 2005	United States Of	24 Oct 2008	FFS-Web Confirmation No.
10294	11/243242	04 Oct 2005	United States Of	24 Oct 2008	Restriction Requirement Response Due
MJE00259	61/108264	24 Oct 2008	United States Of	24 Oct 2008	FFS-Web Confirmation No.
MJE00259	61/108264	24 Oct 2008	United States Of	24 Oct 2008	Filing
MJE00259	61/108264	24 Oct 2008	United States Of	24 Oct 2008	Filing decision
MJE00256	61/108303	24 Oct 2008	United States Of	24 Oct 2008	FFS-Web Confirmation No.
MJE00256	61/108303	24 Oct 2008	United States Of	24 Oct 2008	Filing
MJE00256	61/108303	24 Oct 2008	United States Of	24 Oct 2008	Filing decision
MJE00257	61/108309	24 Oct 2008	United States Of	24 Oct 2008	Filing
MJE00257	61/108309	24 Oct 2008	United States Of	24 Oct 2008	Filing decision
MJE00258	61/108315	24 Oct 2008	United States Of	24 Oct 2008	FFS-Web Confirmation No.
MJE00258	61/108315	24 Oct 2008	United States Of	24 Oct 2008	Filing
MJE00258	61/108315	24 Oct 2008	United States Of	24 Oct 2008	Filing decision
MJE00256	61/111009	04 Nov 2008	United States Of	24 Oct 2008	Priority
10160	11/066373	25 Feb 2005	United States Of	24 Oct 2008	FFS-Web Confirmation No.
10160	11/066373	25 Feb 2005	United States Of	24 Oct 2008	PETITION FILED
PH7350	11/093670	30 Mar 2005	United States Of	24 Oct 2008	FFS-Web Confirmation No.
PH7350	11/093670	30 Mar 2005	United States Of	24 Oct 2008	Issue & Pub Fee Due
10206	11/103139	11 Apr 2005	United States Of	24 Oct 2008	PETITION FILED
10451	11/330528	12 Jan 2006	United States Of	24 Oct 2008	FFS-Web Confirmation No.
11256	61/055901	14 Feb 2008	United States Of	24 Oct 2008	Issue & Pub Fee Due
11257	61/055925	14 Feb 2008	United States Of	27 Oct 2008	12M Filing Decision Due
11171	61/094088	04 Sep 2008	United States Of	27 Oct 2008	Corrected Filing Receipt Received
11139	61/100907	25 Sep 2008	United States Of	27 Oct 2008	Prepare/Record Assignment
11139	61/100907	25 Sep 2008	United States Of	27 Oct 2008	Record
11130	61/101760	01 Oct 2008	United States Of	27 Oct 2008	Prepare/Record Assignment
11130	61/101760	01 Oct 2008	United States Of	27 Oct 2008	Record
11301	12/259075	27 Oct 2008	United States Of	27 Oct 2008	Filing
LA24A	09/291053	07 Sep 1999	United States Of	27 Oct 2008	Information disclosure statement
10227	11/170958	30 Jun 2005	United States Of	27 Oct 2008	PROOF PATENT
LA0114	10/834444	26 May 2004	United States Of	27 Oct 2008	PROOF PATENT
LA0114	10/834444	26 May 2004	United States Of	27 Oct 2008	Issue & Pub Fee Due
10476	11/310636	12 Jan 2006	United States Of	27 Oct 2008	PROOF PATENT
10663	11/529875	28 Sep 2006	United States Of	27 Oct 2008	FFS-Web Confirmation No.
10663	11/529875	28 Sep 2006	United States Of	27 Oct 2008	Final Rejection
10663	11/529875	28 Sep 2006	United States Of	27 Oct 2008	Final Review
10602	11/165875	24 Jun 2005	United States Of	27 Oct 2008	FFS-Web Confirmation No.
10602	11/165875	24 Jun 2005	United States Of	27 Oct 2008	Maintenance Fee Stmt Rcd
XN19A	09/842256	26 Apr 2001	United States Of	27 Oct 2008	Maintenance Fee Stmt Rcd
MA0011	08/396825	02 Mar 1995	United States Of	27 Oct 2008	FFS-Web Confirmation No.
10013	11/038882	19 Jan 2005	United States Of	27 Oct 2008	Issue & Pub Fee Due
10013	11/038882	19 Jan 2005	United States Of	27 Oct 2008	FFS-Web Confirmation No.
10264	11/151627	13 Jun 2005	United States Of	27 Oct 2008	PETITION FILED
10272	11/104856	13 Aug 2005	United States Of	27 Oct 2008	Supplemental IDS
11032	12/249180	10 Oct 2008	United States Of	27 Oct 2008	Prepare/Record Assignment

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USPTO MAIL RECEIVED BETWEEN OCTOBER 24, 2008 and OCTOBER 30, 2008

Family Number	Filing Number	Filing	Country	Date Received/Performed	Event
11032	12/249480	10 Oct 2008	United States Of	27 Oct 2008	OA Received
10863	11/7244804	15 Mar 2007	United States Of	27 Oct 2008	EFS-Web Confirmation No.
10737	12/097080	13 Dec 2006	United States Of	27 Oct 2008	Notification of Missing Requirements
10737	12/097080	13 Dec 2006	United States Of	27 Oct 2008	EFS-Web Confirmation No.
KO10089	10/913180	06 Aug 2004	United States Of	28 Oct 2008	ENTITY STATUS CHANGE
KO10089	10/913180	06 Aug 2004	United States Of	28 Oct 2008	Issue & Pub Fee Due
KO10089	61/037480	18 Mar 2008	United States Of	28 Oct 2008	12M Filing Decision Due
10942	61/037509	18 Mar 2008	United States Of	28 Oct 2008	12M Filing Decision Due
KO10137	11/412298	26 Apr 2006	United States Of	28 Oct 2008	Final OA Received
D0029	11/640775	18 Dec 2006	United States Of	28 Oct 2008	CONFIRM PATENT GRANT
D0029	11/640775	18 Dec 2006	United States Of	28 Oct 2008	Grant
D0186	11/725755	20 Mar 2007	United States Of	28 Oct 2008	CONFIRM PATENT GRANT
D0186	11/725755	20 Mar 2007	United States Of	28 Oct 2008	Grant
D0186	11/725755	20 Mar 2007	United States Of	28 Oct 2008	Patient Term Adjustment
QA0267	11/585598	24 Oct 2006	United States Of	28 Oct 2008	EFS-Web Confirmation No.
QA0267	11/585598	24 Oct 2006	United States Of	28 Oct 2008	Issue & Pub Fee Due
10515	11/642508	20 Dec 2006	United States Of	28 Oct 2008	EFS-Web Confirmation No.
10515	11/642508	20 Dec 2006	United States Of	28 Oct 2008	Office action
CT2772A	11/620291	05 Jan 2003	United States Of	28 Oct 2008	Certificate of Correction Recd
PH088	12/024812	01 Feb 2008	United States Of	28 Oct 2008	PROOF PATENT
10614	11/426693	27 Jun 2006	United States Of	28 Oct 2008	CONFIRM PATENT GRANT
PH7392	11/717440	13 Mar 2007	United States Of	28 Oct 2008	Grant
PH7392	11/717440	13 Mar 2007	United States Of	28 Oct 2008	CONFIRM PATENT GRANT
LD137E	10/6539272	12 Aug 2003	United States Of	28 Oct 2008	Maintenance Fee Stmt Recd
D0250	10/618107	17 Jul 2003	United States Of	28 Oct 2008	CONFIRM PATENT GRANT
D0250	10/618107	17 Jul 2003	United States Of	28 Oct 2008	Grant
D0250	10/618107	17 Jul 2003	United States Of	28 Oct 2008	Patient Term Adjustment
D0028	09/8653321	23 May 2001	United States Of	28 Oct 2008	Certificate of Correction Recd
HX96	09/040794	18 Mar 1998	United States Of	28 Oct 2008	Maintenance Fee Stmt Recd
PH7398	11/9526578	13 Dec 2007	United States Of	28 Oct 2008	Office Action - Agent Response
PH7152	10/180859	26 Jun 2002	United States Of	28 Oct 2008	Maintenance Fee Stmt Recd
QA028B	09/097338	26 Jan 2000	United States Of	28 Oct 2008	Maintenance Fee Stmt Recd
10701	11/4121807	27 Jun 2006	United States Of	28 Oct 2008	EFS-Web Confirmation No.
10701	11/4121807	27 Jun 2006	United States Of	28 Oct 2008	Office action
10517	11/471125	20 Jun 2006	United States Of	28 Oct 2008	Restriction Requirement Received
10992	10/327813	20 Dec 2002	United States Of	28 Oct 2008	EFS-Web Confirmation No.
KO10155	12/070835	20 Feb 2008	United States Of	28 Oct 2008	Supplemental IDS
QA0267	12/259483	28 Oct 2008	United States Of	28 Oct 2008	Power of Attorney
QA0267	12/259483	28 Oct 2008	United States Of	28 Oct 2008	Application Data Sheet
QA0267	12/259483	28 Oct 2008	United States Of	28 Oct 2008	EFS-Web Confirmation No.
QA0267	12/259483	28 Oct 2008	United States Of	28 Oct 2008	Filing
11246	10/650591	27 Aug 2003	United States Of	28 Oct 2008	Specification Filed
11221	11/482641	07 Jul 2006	United States Of	28 Oct 2008	Office action
10555	11/382742	11 May 2006	United States Of	28 Oct 2008	Advisory Action Received
10614	12/260051	28 Oct 2008	United States Of	28 Oct 2008	Filing
KO10011	11/932927	31 Oct 2007	United States Of	28 Oct 2008	Updated Filing Receipt

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Family Number	Filing Number	Filing	Country	Date Received/Performed	Event
10103	10/979958	03 Nov 2004	United States Of	29 Oct 2008 OA Received	Attorney / Agent LIU, HONG (A-11640389)
11158	61/027891	12 Feb 2008	United States Of	29 Oct 2008 Prepare/Record Assignment	BOGIE, TERENCE (A-11093556)
11158	61/027891	12 Feb 2008	United States Of	29 Oct 2008 Record	KORSEN, ELLIOTT (A-11081740)
11141	61/034637	07 Mar 2008	United States Of	29 Oct 2008 Prepare/Record Assignment	KORSEN, ELLIOTT (A-11081740)
11141	61/034637	07 Mar 2008	United States Of	29 Oct 2008 Record	KORSEN, ELLIOTT (A-11081740)
11203	61/026651	06 Feb 2008	United States Of	29 Oct 2008 Prepare/Record Assignment	LIU, HONG (A-11640389)
11203	61/026651	06 Feb 2008	United States Of	29 Oct 2008 Record	LIU, HONG (A-11640389)
11320	61/100896	29 Sep 2008	United States Of	29 Oct 2008 EFS-Web Confirmation No.	MINGO, PAMELA (A-1113152)
11320	61/100896	29 Sep 2008	United States Of	29 Oct 2008 PETITION FILED	MINGO, PAMELA (A-1113152)
11347	61/100901	29 Sep 2008	United States Of	29 Oct 2008 Application Data Sheet	MINGO, PAMELA (A-1113152)
11347	61/100901	29 Sep 2008	United States Of	29 Oct 2008 EFS-Web Confirmation No.	MINGO, PAMELA (A-1113152)
11347	61/100901	29 Sep 2008	United States Of	29 Oct 2008 PETITION FILED	MINGO, PAMELA (A-1113152)
11491	61/109455	29 Oct 2008	United States Of	29 Oct 2008 Filing	SPALDING, TODD (A-11603384)
K010060	10/611442	30 Jun 2003	United States Of	29 Oct 2008 EFS-Web Confirmation No.	D'AMICO, STEPHEN (A-1017673)
K010060	10/611442	30 Jun 2003	United States Of	29 Oct 2008 PETITION FILED	D'AMICO, STEPHEN (A-1017673)
D0272	10/817607	02 Apr 2004	United States Of	29 Oct 2008 PETITION DISMISSED	D'AMICO, STEPHEN (A-1017673)
PH7445	10/855433	10 Jun 2004	United States Of	29 Oct 2008 EFS-Web Confirmation No.	DUNCAN, LAURELEE (A-1038688)
PH7445	10/855433	10 Jun 2004	United States Of	29 Oct 2008 Issue & Pub Fee Due	DUNCAN, LAURELEE (A-1038688)
10128	11/034652	13 Jan 2005	United States Of	29 Oct 2008 EFS-Web Confirmation No.	DUNCAN, LAURELEE (A-1038688)
10128	11/034652	13 Jan 2005	United States Of	29 Oct 2008 Office action	DUNCAN, LAURELEE (A-1038688)
LA0772	11/046759	19 Apr 2006	United States Of	29 Oct 2008 Patent Term Adjustment	GIBBONS, MAUREEN (A-1030219)
10392	11/255464	21 Oct 2005	United States Of	29 Oct 2008 EFS-Web Confirmation No.	GREENBLATT, GARY (A-1116089)
10392	11/255464	21 Oct 2005	United States Of	29 Oct 2008 Final Rejection	GREENBLATT, GARY (A-1116089)
10392	11/255464	21 Oct 2005	United States Of	29 Oct 2008 Binal Review	GREENBLATT, GARY (A-1116089)
10602	11/165875	24 Jun 2005	United States Of	29 Oct 2008 PROOF PATENT	KORSEN, ELLIOTT (A-11081740)
HAB814	10/912457	01 Sep 2004	United States Of	29 Oct 2008 PETITION DISMISSED	LIU, HONG (A-11640389)
LD01918	11/168223	28 Jun 2005	United States Of	29 Oct 2008 EFS-Web Confirmation No.	RODNEY, BURTON (A-59)
LD01918	11/168223	28 Jun 2005	United States Of	29 Oct 2008 PETITION FILED	SUN, JING (A-1037223)
10179	11/151667	13 Jun 2005	United States Of	29 Oct 2008 CONFIRM PATENT GRANT	SUN, JING (A-1037223)
10179	11/151667	13 Jun 2005	United States Of	29 Oct 2008 Patent Term Adjustment	DUNCAN, LAURELEE (A-1038688)
10127	11/034822	13 Jan 2005	United States Of	29 Oct 2008 OA Received	D'AMICO, STEPHEN (A-1017673)
10219	12/093042	10 Nov 2006	United States Of	29 Oct 2008 EFS-Web Confirmation No.	KORSEN, ELLIOTT (A-11081740)
10219	12/093042	10 Nov 2006	United States Of	29 Oct 2008 Miss. Parts Due - Declaration	D'AMICO, STEPHEN (A-1017673)
10219	12/093042	10 Nov 2006	United States Of	29 Oct 2008 Missing Parts Due - Sequence	KORSEN, ELLIOTT (A-11081740)
10219	12/093042	10 Nov 2006	United States Of	29 Oct 2008 Prepare/Record Assignment	KORSEN, ELLIOTT (A-11081740)
10219	12/093042	10 Nov 2006	United States Of	29 Oct 2008 Record	KORSEN, ELLIOTT (A-11081740)
10555	11/382742	11 May 2006	United States Of	29 Oct 2008 EFS-Web Confirmation No.	KILCOYNE, JOHN (A-213)
10555	11/382742	11 May 2006	United States Of	29 Oct 2008 Request continued examination	KILCOYNE, JOHN (A-213)
10555	11/382742	11 May 2006	United States Of	29 Oct 2008 OA Received	KILCOYNE, JOHN (A-213)
K010144	11/637566	11 Dec 2006	United States Of	29 Oct 2008 Follow Up Filing Receipt	KILCOYNE, JOHN (A-213)
D0340	11/955659	19 Oct 2004	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0327	10/755107	09 Jan 2004	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0330	10/811014	26 Mar 2004	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0331	10/812070	08 Apr 2004	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0336	10/811046	07 May 2004	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0341	11/055931	11 Feb 2005	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0362	11/255051	20 Oct 2005	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0364	11/267046	04 Nov 2005	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)
CV0367	11/459036	21 Jul 2006	United States Of	29 Oct 2008 Record	KILCOYNE, JOHN (A-213)

Exhibit 1

USPTO MAIL RECEIVED BETWEEN OCTOBER 24, 2008 and OCTOBER 30, 2008

Family Number	Filing Number	Filing Date	Country	Date Received/Performed	Event	Attorney / Agent
CV0365	11/17209112	05 Jun 2007	United States Of	29 Oct 2008	Recorded	KILCOYNE, JOHN (A-213)
CV0342	11/19455666	27 Nov 2007	United States Of	29 Oct 2008	Recorded	KILCOYNE, JOHN (A-213)
CV0339	10/17388572	17 Dec 2003	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0338	10/929136	28 Aug 2004	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0336	10/9050546	07 Oct 2004	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0334	10/9270790	21 Oct 2004	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0340	11/0322787	11 Jan 2005	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0361	11/200747	10 Aug 2005	United States Of	29 Oct 2008	Final OA Received	KRIEGER, STUART (A-380)
CV0361	11/200747	10 Aug 2005	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0366	11/288610	29 Nov 2005	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0371	11/428921	06 Jul 2006	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0347	11/462085	01 Aug 2006	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0374	11/466250	22 Aug 2006	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0373	11/548553	11 Oct 2006	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0372	11/548571	11 Oct 2006	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0386	11/669967	01 Feb 2007	United States Of	29 Oct 2008	Final OA Received	KRIEGER, STEPHEN (A-1017673)
CV0346	11/686096	14 Mar 2007	United States Of	29 Oct 2008	Recorded	LIU, HONG (A-11640389)
CV0360	11/776321	11 Jul 2007	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
CV0322	11/930595	31 Oct 2007	United States Of	29 Oct 2008	Recorded	KRIEGER, STUART (A-380)
D0125	11/404725	14 Apr 2008	United States Of	30 Oct 2008	Restriction Requirement Received	DAMICO, STEPHEN (A-1017673)
K01083	10/184490	29 Mar 2004	United States Of	30 Oct 2008	Notice of Abandonment	
HA458	07/179634	11 Apr 1988	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA490B	07/774424	10 Oct 1991	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA524A	07/900383	18 Jun 1992	United States Of	30 Oct 2008	BMS Stop Authority	RODNEY, BURTON (A-59)
HA623	07/928394	12 Aug 1993	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA620A	08/020948	22 Feb 1993	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA637	08/057885	27 May 1993	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA594B	08/131189	04 Oct 1993	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA616A	08/226091	20 Apr 1994	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA636B	08/356743	15 Dec 1994	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA658	09/361397	22 Dec 1994	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA636C	08/528274	14 Sep 1995	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA636D	08/528371	14 Sep 1995	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
HA636E	09/609153	29 Feb 1996	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
11154	61/054098	16 May 2008	United States Of	30 Oct 2008	Prepare/Record Assignment	DAMICO, STEPHEN (A-1017673)
11154	61/054098	16 May 2008	United States Of	30 Oct 2008	Record	DAMICO, STEPHEN (A-1017673)
10931	60/984515	01 Nov 2009	United States Of	30 Oct 2008	Foreign filing deadline	DUNCAN, LAURELLE (A-1038688)
11350	61/101760	01 Oct 2008	United States Of	30 Oct 2008	Follow Up Filing Receipt	MINGO, PAMELA (A-11113152)
HA490A	07/540026	18 Jun 1990	United States Of	30 Oct 2008	Donated	RODNEY, BURTON (A-59)
10665	11/586255	25 Oct 2006	United States Of	30 Oct 2008	Restriction Requirement Received	GIBBONS, MAUREEN (A-1030219)
10874	PCT/US2008/0060	17 Apr 2008	United States Of	30 Oct 2008	International Publication	KORSSEN, ELLIOTT (A-1081740)
LA24A	09/391053	07 Sep 1999	United States Of	30 Oct 2008	FFS-Web Confirmation No.	BOGIE, TERENCE (A-11093556)
LA24A	09/391053	07 Sep 1999	United States Of	30 Oct 2008	File Certificate of Correction	BOGIE, TERENCE (A-11093556)
D0186	11/725755	20 Mar 2007	United States Of	30 Oct 2008	Confirm Patent Term Adjustment	DAMICO, STEPHEN (A-1017673)
D0186	11/725755	20 Mar 2007	United States Of	30 Oct 2008	PETITION FILED	DAMICO, STEPHEN (A-1017673)
LA0059	11/332867	13 Feb 2006	United States Of	30 Oct 2008	Confirm Patent Term Adjustment	GIBBONS, MAUREEN (A-1030219)
10017	11/668641	30 Jan 2007	United States Of	30 Oct 2008	Confirm Patent Term Adjustment	GIBBONS, MAUREEN (A-1030219)
PH7477	10/634078	04 Aug 2003	United States Of	30 Oct 2008	OA Received	LEVIS, JOHN (A-1153967)

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USPTO MAIL RECEIVED BETWEEN OCTOBER 24, 2008 and OCTOBER 30, 2008

Family Number	Filing Number	Filing	Country	Date Received/Performed	Event	Attorney / Agent
10460	11/455338	19 Jun 2006	United States Of	30 Oct 2008	OA Received	LEVIS, JOHN (A-11563967)
PH7392	11/717440	13 Mar 2007	United States Of	30 Oct 2008	ribbon, Copy Received	LEVIS, JOHN (A-11563967)
10763	11/737334	19 Apr 2007	United States Of	30 Oct 2008	Notice of Allowance Received	LEVIS, JOHN (A-11563967)
10763	11/737334	19 Apr 2007	United States Of	30 Oct 2008	Notice of Allowance Received	LEVIS, JOHN (A-11563967)
10797	11/748659	15 May 2007	United States Of	30 Oct 2008	Notice of Allowance Received	LEVIS, JOHN (A-11563967)
10797	11/748659	15 May 2007	United States Of	30 Oct 2008	Notice of Allowance Received	LEVIS, JOHN (A-11563967)
HA0813	10/932981	01 Sep 2004	United States Of	30 Oct 2008	FFS-Web Confirmation No.	LIU, HONG (A-11640389)
HA0813	10/932981	01 Sep 2004	United States Of	30 Oct 2008	DEFINITION FILED	LIU, HONG (A-11640389)
10302	11/232063	21 Sep 2005	United States Of	30 Oct 2008	Confirm Patent Term Adjustment	LIU, HONG (A-11640389)
10302	11/232063	21 Sep 2005	United States Of	30 Oct 2008	FFS-Web Confirmation No.	LIU, HONG (A-11640389)
10302	11/232063	21 Sep 2005	United States Of	30 Oct 2008	DEFINITION FILED	LIU, HONG (A-11640389)
LD0191B	11/168223	28 Jun 2005	United States Of	30 Oct 2008	PROOF PATENT	RODNEY, BURTON (A-59)
PH7054	10/809772	25 Mar 2004	United States Of	30 Oct 2008	Cert. of Correction Filed	VANATTEN, MARY (A-6000369)
PH7054	10/809772	25 Mar 2004	United States Of	30 Oct 2008	FFS-Web Confirmation No.	VANATTEN, MARY (A-6000369)
10195	11/049815	03 Feb 2005	United States Of	30 Oct 2008	FFS-Web Confirmation No.	DUNCAN, LAURELLE (A-1036688)
10195	11/049815	03 Feb 2005	United States Of	30 Oct 2008	Office action	DUNCAN, LAURELLE (A-1036688)
10060	11/903106	20 Sep 2005	United States Of	30 Oct 2008	Sequence Listing	GOLIAN, PAUL (A-1175099)
10065	11/032407	17 Mar 2005	United States Of	30 Oct 2008	OA Received	EPPERSON, JAMES (A-11082785)
11045	12/109455	25 Apr 2008	United States Of	30 Oct 2008	Projected Publication Date	GIBBONS, MAUREEN (A-1030219)
11045	12/109455	25 Apr 2008	United States Of	30 Oct 2008	Publication of application	GIBBONS, MAUREEN (A-1030219)
MOE00086	12/254033	20 Oct 2008	United States Of	30 Oct 2008	Assignment(s)	KWARTENG, KOFI
MOE00086	12/254033	20 Oct 2008	United States Of	30 Oct 2008	FFS-Web Confirmation No.	KWARTENG, KOFI
MOE00086	12/254033	20 Oct 2008	United States Of	30 Oct 2008	Prepare Record Assignment	KWARTENG, KOFI
10439	11/340032	26 Jan 2006	United States Of	30 Oct 2008	Final OA Received	LEVIS, JOHN (A-11563967)
11032	12/249180	10 Oct 2008	United States Of	30 Oct 2008	Follow Up Filing Receipt	MINGO, PAMELA (A-1113152)
11032	12/249180	10 Oct 2008	United States Of	30 Oct 2008	Notice to File Miss. Parts Received	MINGO, PAMELA (A-1113152)
D0340	11/975659	19 Oct 2007	United States Of	30 Oct 2008	FFS-Web Confirmation No.	PARLET, NICKKI (A-11124949)
D0340	11/975659	19 Oct 2007	United States Of	30 Oct 2008	File Corrected Filing Receipt	PARLET, NICKKI (A-11124949)
10866	12/166410	02 Jul 2008	United States Of	30 Oct 2008	FFS-Web Confirmation No.	VANATTEN, MARY (A-6000369)
10866	12/166410	02 Jul 2008	United States Of	30 Oct 2008	File Corrected Filing Receipt	VANATTEN, MARY (A-6000369)
CV0373	11/548553	11 Oct 2006	United States Of	30 Oct 2008	OA Received	KRIEGER, STUART (A-380)
CV0389	11/739737	15 Apr 2007	United States Of	30 Oct 2008	Publication of application	KRIEGER, STUART (A-380)

Exhibit 2

COMPLETE DOCKET HISTORY FOR 10159-US-PCT

Type Of Case	Case reference	Event	Performed	Number	Deadline	Acknowledgement Date	Comment
Patent Application	10159-US-PCT	Filing	1/7/2005	10/55261			
Patent Application	10159-US-PCT	Designated	1/7/2005	PCT/US2005/000638			
Patent Application	10159-US-PSP[1]	Foreign filing deadline	1/7/2005		1/7/2005		Cat. F. PCT only
Patent Application	10159-US-PSP[1]	Expiry date	1/7/2005		1/7/2005		
Patent Application	10159-US-PSP[1]	Recordal	2/1/2005	015640/0135			015640/0135 Recordal Information from US Prosecution
Patent Application	10159-US-PSP[1]	Sent to CPA	2/18/2005	64			
Patent Application	10159-US-PCT	Copy of Declaration Filed-converted	7/5/2006		7/5/2006		
Patent Application	10159-US-PCT	Local filing	7/5/2006	10/55261			From PCT Procedure
Patent Application	10159-US-PCT	Sequence Listing - converted	7/5/2006		7/5/2006		
Patent Application	10159-US-PCT	Local filing-C	7/5/2006	10/55261			
Patent Application	10159-US-PCT	National phase	7/5/2006	AWAITING	9/7/2005		
Patent Application	10159-US-PCT	Statement Of Verification-converted	7/5/2006		7/5/2006		
Patent Application	10159-US-PCT	Open	7/5/2006				
Patent Application	10159-US-PCT	Recordal	8/28/2006	018177/0941			018177/0941 Recordal Information from US Prosecution
Patent Application	10159-US-PCT	Assignment Filed-converted	8/28/2006			8/28/2006	
Patent Application	10159-US-PCT	Information disclosure statement	10/3/2006		10/5/2006	10/6/2006	PCT S.R. DATE OF MAILING: 9/14/07
Patent Application	10159-US-PCT	Supplemental IDS	9/25/2007		9/14/2007	10/14/2007	
Patent Application	10159-US-PCT	EFS-Web Confirmation No.	9/25/2007	2236134			
Patent Application	10159-US-PCT	Sent to CPA	3/6/2009	106			
Patent Application	10159-US-PCT	Sent to CPA	5/7/2009	108			
Patent Application	10159-US-PCT	Notice of Abandonment	5/15/2009				NOT REC'D YET. DATE PUSHED FORWARD (FROM 02/05/07 TO 10/26/07) "PLEASE PUSH DEADLINE FORWARD SIX MONTHS" "PLEASE PUSH DEADLINE FORWARD SIX MONTHS" (7/18/08) EXTEND FROM 11/26/08 TO 5/26/09
Patent Application	10159-US-PCT	Miss. Parts Due - Declaration	6/18/2009		5/26/2009		

Exhibit 2

COMPLETE DOCKET HISTORY FOR 10159-US-PCT

Type Of Case	Case Reference	Event	Performed	Number	Deadline	Acknowledgement Date	Comment
Patent Application	10159-US-PCT	PETITION FILED	6/18/2009 REVIVE			6/18/2009	
Patent Application	10159-US-PCT	Misc	6/18/2009			6/18/2009	STATEMENT BY LAURA A. CAPONI
Patent Application	10159-US-PCT	EFS-Web Confirmation No.	6/18/2009	5539299			
Patent Application	10159-US-PCT	Executed Declaration Filed-converted	6/18/2009			6/18/2009	IN RESPONSE TO NOTICE OF MISSING REQUIREMENTS DATED 10/24/2008
Patent Application	10159-US-PCT	PETITION DISMISSED	8/21/2009				



21 AUG 2009

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In re Application of	DECISION ON
Clark et al.	
Application No.: 10/585,261	
PCT No.: PCT/US2005/000638	
Int. Filing Date: 07 January 2005	PETITION UNDER
Priority Date: 07 January 2004	
Attorney's Docket No.: 10159NP	
For: BIOMARKERS AND METHODS...	
FACTOR RECEPTOR MODULATORS	37 CFR 1.137(a)

This decision is in response to applicant's "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)," filed on 18 June 2009.

BACKGROUND

On 07 January 2005, applicants filed international application PCT/US2005/000638, which claimed priority of an earlier application filed 07 January 2004.

On 05 July 2006, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee. No oath or declaration of the inventors accompanied the transmittal letter.

On 24 October 2008, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, *inter alia*, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date... is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68." The Notice stated that the declaration must be submitted within two months from the date of this notice or 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 15 May 2009, a Notification of Abandonment was mailed to petitioner. It stated that the applicant has failed to respond to the notification of Missing Requirements (Form PCT/DO/EO/905), mailed 10/24/08 within the time period set therein.

On 18 June 2009, petitioner filed the instant petition accompanied, *inter alia*, with an executed declaration.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in § 1.17(l); (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The petition is not deemed to satisfy the requirements under 37 CFR 1.137(a). Petitioner has not satisfied item (3) but has satisfied items (1) and (2) under 37 CFR 1.137(a). In this application, no terminal disclaimer is required.

Petitioner has provided: (1) the proper reply by providing an executed declaration.

With respect to item (2), petitioner has provided the proper amount of the petition fee set forth in § 1.17(l).

With respect to item (3), the showing of record by petitioner is inadequate to establish an unavoidable delay within the meaning of 37 CFR 1.137(a). A petition under 37 CFR 1.137 cannot be granted unless it meets the minimal unintentional delay threshold. That is, an intentional delay precludes revival under either 37 CFR 1.137(a) (i.e., unavoidable delay), or 37 CFR 1.137(b) (i.e., "unintentional delay"). See *In re Maldaque*, 10 USPQ2d 1477, 1478 (Comm'r Pat 1988). The analysis will be based on the standard of Withdrawing Holding of Abandonment.

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that:

"The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993)."

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 2d, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

A review of the petition reveals that petitioner has not complied with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed for reply. Petitioner's copy of the office's docket report is insufficient to establish failure to receive the Office communication because petitioner has not provided a copy of the log showing all the mailed received during the time period the office communication would have been received (time period between October 24, 2008 and October 30, 2008). Laura Caponi states that she searched the docket system for all dates from January 7, 2005 to May 15, 2009 and found no record of the receipt of the Notice of Missing Requirements, however no evidence was submitted as stated above such as the log showing mailed received from the USPTO between October 24, 2008 and October 30, 2008. Also, petitioner has not provided a tickler sheet for the time period around 24 December 2008. In other words, to establish a showing nonreceipt of the Notification of Missing Requirements would require, a copy of both the docket report showing all replies docketed for a date of two months from the mail date of the nonreceived Office action, which was around 24 December 2008 and a log showing all the mailed received from the USPTO during the time period the office communication would have been received.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned-application at this time is not appropriate.

As such, the petition is deemed not to satisfy item (3) under 37 CFR 1.137(a).

CONCLUSION

For the reasons above, the petition to revive under 37 CFR 1.137(a) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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